

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Alan Viggiano

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Cigarette Tax :  
under Article 20 of the Tax Law  
for the Year 1975. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of March, 1980, he served the within notice of Determination by mail upon Alan Viggiano, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan Viggiano  
9031 Farragut Ave.  
Brooklyn, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
28th day of March, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

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for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Cigarette Tax :  
under Article 20 of the Tax Law  
for the Year 1975. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of March, 1980, he served the within notice of Determination by mail upon Bernard Udell the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

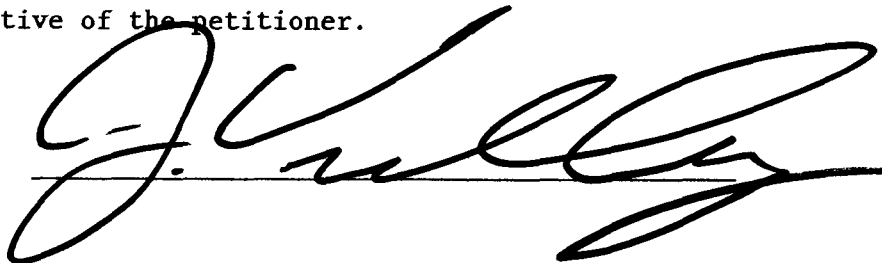
Mr. Bernard Udell  
50 Court St.  
Brooklyn, NY 11201

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
28th day of March, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

March 28, 1980

Alan Viggiano  
9031 Farragut Ave.  
Brooklyn, NY

Dear Mr. Viggiano:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 478 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Bernard Udell  
50 Court St.  
Brooklyn, NY 11201  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
ALAN VIGGIANO	:	DETERMINATION
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law for the	:	
Year 1975.	:	

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Applicant, Alan Viggiano, 9031 Farragut Avenue, Brooklyn, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1975 (File No. 21574).

A formal hearing was held before David L. Evans, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 20, 1979 at 9:40 A.M. Applicant appeared by Bernard Udell, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irving Atkins and Samuel Freund, Esqs., of counsel).

ISSUE

Whether applicant possessed or controlled packages of cigarettes which bore no New York cigarette tax stamps, and therefore, is subject to a penalty imposed pursuant to section 481.1(b) of the Tax Law.

FINDINGS OF FACT

1. On March 15, 1978, the Audit Division issued a Notice of Determination of Tax Due Under Cigarette Tax Law against applicant for a penalty of \$1,976.00. This was based on the March 19, 1975 seizure of 688 cartons of cigarettes not bearing New York tax stamps subject to penalty.

2. On March 19, 1975, pursuant to a search warrant, police searched the premises at 137-72 70th Avenue, Queens, New York. In the ground floor apartment

and garage, the police found and seized the cigarettes discussed in Finding of Fact "1".

3. At the time of the execution of the search warrant, the police found applicant, Alan Viggiano, present in the same premises where the cigarettes were discovered. Applicant was arrested and subsequently indicted for possession or control of packages of cigarettes not bearing New York tax stamps under section 481 of the Tax Law, a felony.

5. On June 18, 1975, applicant plead guilty to possession or control of not more than 99 cartons of cigarettes not bearing New York tax stamps in violation of section 481 of the Tax Law, a misdemeanor.

#### CONCLUSIONS OF LAW

A. That applicant, Alan Viggiano, was in possession of or had under his control not more than 99 cartons of cigarettes which bore no New York cigarette tax stamps.

B. That under section 481.1(b) of the Tax Law, the State Tax Commission may impose a penalty of not more than \$100.00 for each 200 cigarettes or fraction thereof in excess of 2,000 cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person.

C. That in its discretion, the State Tax Commission may remit all or part of the penalty imposed by section 481.1(b) of the Tax Law.

D. That based on the facts presented, the Commission determines the penalty is hereby reduced to five dollars per carton for a total of \$495.00.

E. That except as provided in Conclusion of Law "D" above, the application of Alan Viggiano is denied and the Notice of Determination dated March 15, 1978 is hereby sustained.

DATED: Albany, New York

MAR 28 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER